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FEB 14 2006

OFFICE OF PETITIONS

In re Application of	:	
Scott Smith	:	
Application No. 10/630,562	:	DECISION ON PETITION
Filed: July 30, 2003	:	
Docket No. 760-12 DIV/CON	:	

This is a decision on the petition, filed March 30, 2005, to withdraw the holding of abandonment for the above-identified application. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience.

On July 28, 2004, the Office mailed a nonfinal Office action, which set a three-month shortened statutory period for reply. On October 12, 2004 (certificate of mailing dated October 7, 2004), applicant filed a "Response Pursuant to 37 CFR 1.111." On October 22, 2004, the Office mailed a Notice of Non-Compliant Amendment, which set a one-month extendable period to reply. On November 1, 2004 (certificate of mailing dated October 28, 2004), applicant filed a "Response to Notice of Non-Compliant Amendment." On February 1, 2005, the Office mailed a Notice of Abandonment. The Notice stated that the application was abandoned because applicant failed to file a petition for an extension of time with the appropriate fee pursuant to 37 CFR 1.17.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

In the present petition, applicant asserted that the application was not abandoned and requested that the Office withdraw the holding of abandonment. Specifically, applicant averred that a petition for an

extension of time was not required because the Notice of Non-Compliant Amendment provided a reply period of one month pursuant to 37 CFR 1.135(c). Furthermore, applicant stated he submitted a timely response to the Notice, containing the required signature.

Upon a review of the record, applicant's assertions are correct. The amendment filed on October 12, 2004, was unsigned. Therefore, the Office mailed a Notice of Non-Compliant Amendment on October 22, 2004. Because the non-compliant amendment was in response to a nonfinal Office action and appeared to be a *bona fide* attempt to reply, applicant was given an extendable one-month time period from the mailing of the Notice to re-submit the corrected section to avoid abandonment (i.e. until November 22, 2004). Accordingly, applicant's "Response to Notice of Non-Compliant Amendment" of November 1, 2004 (certificate of mailing dated October 28, 2004), was filed timely.

The petition to withdraw the holding of abandonment is granted. The Office has concluded that the Notice of Abandonment was mailed in error and hereby withdraws the holding of abandonment. The application is restored to pending status in view of the fact that a response was timely filed and received in the USPTO on November 1, 2004.

This matter is being referred to Technology Center Art Unit 3738.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

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